

*United States Court of Appeals*  
*for the*  
*District of Columbia Circuit*



**TRANSCRIPT OF  
RECORD**



# TRANSCRIPT OF RECORD.

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Court of Appeals, District of Columbia

**APRIL TERM, 1910.**

**No. 2158.**

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**736**

JESSE W. RAWLINGS, APPELLANT,

*vs.*

LEWIS E. COLLINS.

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

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**FILED APRIL 27, 1910.**

# COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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# In the Court of Appeals of the District of Columbia.

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No. 2158.

JESSE W. RAWLINGS  
vs.  
LEWIS E. COLLINS.

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a

Supreme Court of the District of Columbia.

Equity. No. 28,444.

JESSE W. RAWLINGS, Complainant,  
vs.  
LEWIS E. COLLINS, Defendant.

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill of Complaint.*

Filed Apr. 2, 1909.

In the Supreme Court of the District of Columbia.

Equity. No. 28444.

JESSE W. RAWLINGS, Complainant,  
vs.  
LEWIS E. COLLINS, Defendant.

The complainant respectfully shows to the court as follows:

1. That he is a citizen of the United States and a resident of the District of Columbia, and brings this suit in his own right.
2. That the defendant is likewise a citizen of the United States and a resident of the District of Columbia and is sued as hereinafter shown.
3. That on the 28th day of January, 1909, the defendant being then and now the owner of the property hereinafter described, en-

tered into a written contract with the Frank T. Rawlings Company, a corporation, (the said Frank T. Rawlings Company acting therein as agent for the complainant Jesse W. Rawlings,) for the sale of Lot 33 in Square 144, being premises number 1824 E Street N. W., Washington, D. C., by the terms of which it was understood and agreed as follows to wit; price of property \$1920.00 all cash, clear of all incumbrance; good record title; interest, rents, insurance and taxes to be adjusted to the date of settlement; settlement to be made

2 within forty days from the date of contract, in default of which, the deposit of \$100.00 made by complainant and

receipted for by the defendant was to be forfeited, but the forfeiture thereof was not to relieve the purchaser from the responsibility of complying with the terms of sale.

4. That at the time of the making of said contract said property was incumbered by a deed of trust securing the payment of the sum of \$1000.00 which trust under the terms of said contract was to be paid off by the said defendant and released of record in order that an unincumbered title be delivered to complainant in accordance with said contract, that shortly after the making of said contract, complainant ordered an examination of the title; a report from the title company made a week or so later showed the incumbrance referred to still of record, and inquiry on the part of the complainant developed the fact that the defendant had taken no steps looking to the discharge of the incumbrance, and thereupon complainant, for the accommodation of the defendant and in order to hasten a settlement, undertook to negotiate for the discharge of the incumbrance, and after learning the name of the representative of the holder of the note secured by the deed of trust, began negotiations with him, for release thereof, and found that the loan had not matured and that the holder of the note insisted upon charging a bonus for accepting the money before maturity. Negotiations concerning the amount of this bonus continued until a few days before the expiration of the forty days' time limited by the contract, when it was finally agreed that a bonus of one per cent should be paid, and it was not until Saturday,

3 the 13th day of March, 1909, that your complainant was notified by the representative of the holder of the note, that he

had the note in his possession and was prepared to surrender it upon receiving the amount thereof with interest, and the bonus of one per cent as aforesaid. That all of these negotiations were transacted by the complainant as an accommodation for the defendant without any consideration moving to the complainant and for the sole purpose of enabling the defendant to carry out his contract to deliver to the plaintiff an unincumbered title.

5. That shortly after the making of the contract aforesaid, the complainant requested permission of the defendant to make certain repairs to the house, paint down the front thereof, and erect a fence on the property. This permission was granted by the defendant and the work was done by the complainant at an expense of \$48.00. On the day before the expiration of the contract, the complainant sent to the defendant a deed for the property for execution, and the same was on the same day executed by the defendant and retained by

him. On the day of the expiration of the forty days, the complainant through his agent, notified the defendant that he was engaged in preparing a statement for settlement of the sale, and requested the defendant to give him the data regarding the rents, water rents, and taxes, which the defendant did. On the 11th day of March, two days after the expiration of the contract, the complainant, through his agent, called up the defendant over the telephone, told him that he had the check and statement, and was coming down to close the

deal, to which the defendant assented, and thereupon the complainant went to see the defendant, offered to close the sale,

but the defendant refused and stated that he would not carry out the contract, on the ground that the sale should have been closed within the forty days, and that the forty days had expired. The defendant thereupon notified the plaintiff that he would forfeit the deposit, keep the benefit of the repairs made to his property and the work and labor performed in connection with the matter by the complainant, and complainant avers that at no time prior to the 11th day of March, 1909, did the defendant ever suggest or intimate any intention not to carry out the contract. That he acquiesced in and permitted the complainant to expend his money on his property, and on an examination of the title and his time and labor in negotiating for the release of the deed of trust, and now claims a forfeiture of the complainant's rights for the alleged breach of contract, when the defendant himself had made no attempt to perform his part of the contract, contrary to equity and good conscience and in fraud of plaintiff's rights. Complainant tenders himself ready and willing to take said property free and unencumbered, as called for in the contract, or to take the same subject to the incumbrance thereon, with a corresponding diminution in the price, whichever the Court deems more equitable, and now offers to pay into Court such amount as may in equity and good conscience be due the defendant upon either alternative.

The premises considered, the plaintiff, prays,

1. That service of process with a subpoena be made upon the defendant Lewis E. Collins, and that he be required to appear and make answer hereto.

2. That the defendant be directed and enjoined to transfer and convey to the complainant either a good and unencumbered title to said property or a good title thereto subject only to the incumbrance set out in Bill of Complaint and in the latter event, that the price to be paid by your complainant be diminished to the extent of the incumbrance on said property.

3. And for such other and further relief as the nature of the case may require.

JESSE W. RAWLINGS.

PENNEBAKER, CARUSI & JONES,  
*Att'ys for Plaintiff.*

DISTRICT OF COLUMBIA, ~~ss~~:

Jesse W. Rawlings, being first duly sworn, on oath deposes and says that he has read the foregoing Bill of Complaint by him subscribed and that the facts therein stated are true.

JESSE W. RAWLINGS.

Subscribed and sworn to before the undersigned Notary Public this 1st day of April, 1909.

[SEAL.]

D. H. ROLAND DRURY,  
*Notary Public.*

6

*Defendant's Answer.*

Filed Jul- 7, 1909.

\* \* \* \* \*

The defendant for answer to the Bill in this Cause says:

1 and 2. He admits the averments of paragraphs 1 and 2 of the Bill.

3. He denies the averments of paragraph 3 of the Bill as made and says that the paper dated January 28th 1909 was simply an option agreement with an express time limitation of forty days which expired March 9th 1909 and said paper was in no sense an agreement of sale with such mutuality of obligation as to entitle any one claiming under it to specific performance thereof. He denies that the Frank T. Rawlings Company was, or that he was in any wise informed that it was the agent of Complainant.

4. He admits that the real estate described in the Bill was subject to an incumbrance of \$1000. but denies that under the said paper said trust was to be paid off by the defendant and says that Complainant acting for said Rawlings Company offered and agreed to arrange for deduction of the amount of said incumbrance from the purchase price and defendant denies that he was under any obligation whatever to take any action concerning said trust. Defendant does not know what complainant did if anything concerning said trust but says that whatever it was it was done solely for Complainant's  
7 benefit and in recognition of his undertaking in the premises.

5. It is true that at a time when defendant believed that the option would be exercised within the time limited he gave permission to Complainant who professed to be acting as agent for some one not named but other than himself to have some painting done wholly at said agent's risk. He denies that he authorized the erection of a fence and he denies that Complainant has expended any such sum as \$48. It is true that before expiration of the time limit a deed was sent to defendant for execution and was executed and retained by defendant. He denies that on March 11th Complainant notified defendant that he was about to close the deal and that defendant assented. He denies that any legal tender of the price either without deducting the amount of the trust or after deducting it was ever made by either complainant or said Rawlings Company. It is true that ever since the close of business

on March 9th 1909 defendant has insisted that said option had expired by its own terms and was no longer binding upon him and defendant is advised and insists that such is the undoubted legal effect of the paper which complainant himself prepared. The Complainant had 40 days as he knew, within which to close the option and if he saw fit to delay beyond that time he has only himself to blame. Further answering this defendant says that since the expiration of said option the value of said real estate has greatly increased and so time has become of the essence of the contract so that it would 8 be most inequitable to now compel sale of the real estate for the low price named in said option after it has expired, when if the price had fallen defendant could not have compelled compliance.

Further answering this defendant says the complainant has not in and by his said Bill made or stated any such case as entitles him to any equitable relief and he claims the same benefit of this objection as if raised by demurrer.

LEWIS E. COLLINS.

JOHN RIDOUT,  
*Solicitor for Def't.*

I do solemnly swear that I have read the foregoing answer by me subscribed and know the contents thereof that the facts therein stated of my personal knowledge are true and the facts stated on information and belief I believe to be true.

LEWIS E. COLLINS.

Subscribed and sworn to before me this 7th day of July 1909.  
[SEAL.]

H. O. THOMPSON,  
*Notary Public.*

*Replication.*

Filed Sep. 3, 1909.

\* \* \* \* \*

The complainant joins issue on the answer of the defendant filed herein.

PENNEBAKER, CARUSI & JONES,  
*Att'y's for Complainant.*

9

*Testimony of Plaintiff.*

Filed Nov. 4, 1909.

\* \* \* \* \*

WASHINGTON, D. C., September 24, 1909—2 o'clock p. m.

Met, pursuant to notice (said notice being attached to the testimony herewith) at the offices of Pennebaker, Carusi and Jones, Room No. 214, National Metropolitan Bank Building, 613 15th

street, Washington, D. C. on the above date and hour for the purpose of taking testimony in behalf of the Plaintiff in the above entitled suit.

Present: Eugene A. Jones, Esq., one of the attorneys for the Plaintiff; John Ridout, Esq., attorney for the Defendant Jesse W. Rawlings, the Plaintiff; Lewis E. Collins, the Defendant; Frank T. Rawlings and D. H. Roland Drury, witnesses, and George C. Shinn, Examiner in Chancery.

Thereupon, JESSE W. RAWLINGS, the Plaintiff, appearing as a witness in his own behalf, after being first duly sworn by the Examiner, was examined and testified as follows:

Direct testimony.

By Mr. JONES:

Q. Mr. Rawlings, are you the Plaintiff in this suit? A. I am.

Q. You are a citizen of the United States, and a resident of the District of Columbia? A. I am.

Q. What is your business? A. I am in the real estate business.

Q. What associations have you with the Frank T. Rawlings Company? A. I am Vice-president of the Company.

Q. That is a corporation? A. A corporation, yes sir.

Q. I hand you this paper (handing witness a paper) and ask you what it is and who executed it? A. It is a contract of sale.

Mr. RIDOUT: I object to the question on the ground that the paper speaks for itself.

Q. Who executed it? A. Lewis E. Collins, as owner of the property, and Frank T. Rawlings, as agent for the purchaser of the property.

Mr. RIDOUT: I further object on the ground that it is not duly executed so as to bind a corporation, and further on the ground that it is immaterial to this controversy.

Q. Lewis E. Collins is the defendant in this suit? A. Yes.

Mr. JONES: I offer this paper in evidence, and ask that the Examiner mark it for identification.

Mr. RIDOUT: Objected to on the same grounds.

NOTE.—Said paper writing, dated, Washington, D. C. January 28, 1909, and signed Frank T. Rawlings Company's agent, and Lewis E. Collins, is filed by the Examiner and marked "Plaintiff's Exhibit No. 1."

Q. Who was the Frank T. Rawlings Company acting for? A. Acting for the purchaser and the seller.

Q. Who was the purchaser? A. Jesse W. Rawlings, myself.

Q. What was the condition of the property at the time of making that contract, as to incumbrances?

Mr. RIDOUT: Objected to as immaterial.

A. There was an existing trust of a Thousand Dollars on the property.

Mr. RIDOUT: Objected to, because the best evidence is the paper itself, or some duly authenticated copy of the same.

Q. Mr. Rawlings, was that contract complied with?

Mr. RIDOUT: Objected to as calling for a conclusion of law.

A. It was not.

Q. Why was it not? A. That will remain with the Defendant. The Plaintiff is prepared, and always has been prepared to carry out the terms of the contract, but the Defendant refused to do so.

Mr. RIDOUT: So much of the answer as refers to the attitude of the Plaintiff is objected to as not being responsive to the question.

Q. Do you know whether or not Mr. Collins made any attempt to remove the incumbrances from the property?

Mr. RIDOUT: Objected to as immaterial.

A. He did not.

Q. Has Mr. Collins at any time since the execution of the contract offered to make title free of incumbrances to you? A. He has not.

Q. State what, if anything, you did with regard to discharging the incumbrances on the property?

Mr. RIDOUT: I object to the question as immaterial.

A. I was the representative of the holder of the note, Mr. Harry S. Welch a real estate broker, who placed the loan thereon 12 and asked him if it was possible—

Mr. RIDOUT (interrupting the witness): Any conversations had between this plaintiff and Harry S. Welch are objected to, as not binding on the Defendant.

The WITNESS (resuming): I saw Mr. Welch and entered into negotiations with him to have the trust on the property removed, in order to carry out the provisions of the contract.

Q. From when did the negotiations begin?

Mr. RIDOUT: Question objected to as immaterial.

A. Within a week after the contract was signed.

Q. Do you remember when they terminated?

Mr. RIDOUT: I make the same objections to this question.

A. I was notified on the 13th day of March 1909 that the note was in the hands of Mr. Welch, and he was prepared to turn it over upon payment of the principal, interest, and the bonus.

Mr. RIDOUT: Objected to as immaterial.

Q. What was the bonus? A. One per cent.

Q. During these negotiations did you have any conferences with Mr. Collins concerning the discharge of the trust? A. Nothing

beyond the fact that I notified him at the time the contract was signed—

MR. RIDOUT (interrupting witness): I object to any statements made prior to the signing of the contract, because all antecedent negotiations were merged in the written contract.

WITNESS (resuming): After this contract was signed, this trust would have to be removed, because the contract called for the 13 property free of all incumbrances, and he knew it had to be done, and knew I was negotiating with Mr. Welch to have it removed for his benefit.

Q. Mr. Collins knew all that? A. He certainly did.

Q. Had the trust of a Thousand Dollars matured at that time? A. No it had not.

Q. When was it you finally made arrangements to take up the trust by paying the note, and the bonus of one per cent?

MR. RIDOUT: Question objected to as immaterial.

A. On the thirteenth day of March 1909 Mr. Welch notified me that he then had the note in hand, and negotiations were carried on to that end since the contract was signed.

Q. Did you notify Mr. Collins of that fact? A. That the note was in hand?

Q. No, about the arrangements you made to take up the trust? A. I may not have notified him directly, but he was well aware of the fact that I was endeavoring to free the property of this lien.

Q. How was he made aware of that fact? A. He was aware under the terms of the contract, and by my going down to him to close the sale as per the terms.

Q. When did you go to close the sale? A. I notified him of the— I sent down the deed on the last day, or the day prior to the termination, which deed he signed and executed before a Notary Public and retained it. On the following day I called him up and 14 got the data from him, which he gave to me as to the taxes, etc., the last preliminary steps anticipating the closing of the sale, but that was the day before the maturity of the contract. I notified him at that time I would get up a statement, and bring down a check and statement, and so on, in exchange for his deed which he had.

Q. What did he say? A. He said "all right." The very day I came down with the statement and check, I called him up over the phone and stated I was coming down, and he said, All right he would be in. I went down prepared to close, and he then stated he would not close as it was after the expiration of the contract.

Q. That was the only reason he assigned for not closing? A. The only reason he assigned.

Q. Did he demand that you comply with your part of the contract by paying the purchase money, or anything of that kind? A. I then had it in hand and tendered to him the amount necessary to close, and offered to bring it down in gold, or in any way which would make it more binding. but he said he would under no condi-

tions accept it, and that he declared the sale off, and would forfeit my deposit and the repairs made by me, and so on, put upon the property with his consent.

Q. What was the reason for the delay in closing the sale? A. We were waiting upon Mr. Welch, the representative of the holder of the note, to get the terms upon which the note could be 15 taken up, as party was ill, or out of town, I do not recall which, and he was unable until the 13th of March 1909 to notify me that the note was in hand.

Mr. RIDOUT: So much of the testimony as relates to negotiations concerning the note is objected to as immaterial.

Q. In your negotiations for removal of this incumbrance of a Thousand Dollars, for whom were you acting? A. I could only have been acting for Mr. Collins.

Mr. RIDOUT: The answer is objected to as a conclusion of the witness, and an attempt to give his opinion on a question of law, instead of testifying to a fact.

The WITNESS: I was doing it for the benefit of Mr. Collins, as it was his duty, not mine.

Q. Was there any deed for this property ever executed by Mr. Collins? A. Yes, before a Notary Public and retained by Mr. Collins.

Mr. RIDOUT: Answer objected to as being hearsay. The witness has already shown that he was not present when the deed was executed, and I move to strike out the answer from the record.

Q. Please state of your own knowledge, about the execution of that deed? A. I prepared the deed personally and sent it down by our Notary Public, Mr. D. H. Roland Drury, I called up Mr. Collins over the phone and told him it was on its way down. He said he would remain there and execute it, Mr. Drury went down and returned with the statement—

Mr. RIDOUT: I object to any statements as hearsay.

WITNESS (resuming): Mr. Drury came back but did not 16 have the deed with him.

Q. What day was the deed sent down? A. The day prior to the expiration of the forty days mentioned in the contract. It may have been the day of expiration, but I think it was prior.

Q. Did you at any time during the forty day period do anything with the property, make any changes in it?

Mr. RIDOUT: I object to the question as immaterial.

A. I called up Mr. Collins and saw him in person, and got his express agreement and consent to make repairs such as painting, penciling, putting up new fences, which were also painted, glazing roof, repairing and painting, at the cost of about \$48.00.

Mr. RIDOUT: All the testimony of the witness concerning expenditures for repairs is objected to as immaterial.

Q. Did you at any time notify the defendant that you were ready to close the matter? A. The defendant was aware of the fact during the period of forty days.

Q. Did you prepare a statement for him? A. Yes.

Q. When was that prepared? A. It was prepared the day, March 9, 1909, the day of the expiration of the contract.

Mr. RIDOUT: So much of the witness' answer as undertakes to say when the contract expired is objected to as conclusion of law.

The witness continued: The statement was prepared March 9, 1909 showing the transactions, and the balance due to Mr. 17 Collins.

Q. Did you notify the defendant of the preparation of the statement? A. I got the data from him.

Q. What data? A. Regarding the rents which at the time were being paid to him, the taxes, interest, and so on.

Q. March 9, 1909? A. March 9, 1909, or the day prior.

Q. Have you the statement you referred to? A. I have.

Q. Is this it? (showing witness the paper.) A. Yes sir.

Mr. JONES: I offer this in evidence and ask that the Examiner mark it for identification.

Mr. RIDOUT: I object to the paper as being immaterial.

NOTE.—The statement referred to by witness, dated March 9, 1909, is filed by the Examiner, and marked "Plaintiff's Exhibit No. 2."

Q. At the time you made inquiry as to the condition of the water rents, taxes, etcetera, which you have testified you made the basis of that statement, did you say anything to him as to when the sale would be closed? A. As soon as I was prepared to close, having the note in hand, and so on.

Q. What did you mean by that? A. The property was to be delivered free of any incumbrances. At that time I was notified 18 that the loan could be taken up. Acting in Mr. Collins' behalf, I was endeavoring to have this loan taken off the property and I received no notification about it until the 13th day of March, a period four days after the forty day period was up.

Q. What, if anything, did you say to Mr. Collins on that particular branch of the subject? A. As I stated before, Mr. Collins thought—

Mr. RIDOUT: I object to the witness putting anything into the mind of Mr. Collins.

(Witness resumes:) It was understood.

Q. What did you say, if anything, to Mr. Collins when you called on him for that data, about the date of the closing of the sale; did you refer to the subject of the trust or make any reference about the closing of the sale? A. I told Mr. Collins at that time I would close as soon as I was in possession of the proper data.

Q. What did he say to that? A. He made no objection.

Q. Did you say anything about a specific day on which you would close? A. I couldn't, because I was not in possession of the data regarding the \$1000 note.

(Mr. RIDOUT: Answer objected to as argumentative and not responsive.)

(WITNESS resuming:) I could not.

Mr. RIDOUT: I object to the answer and insist upon the categorical answer, yes or no.

A. Yes. I said the contract would be closed when I was in possession of the proper data.

19 Q. Where did this conversation occur? A. Either in person at his place of business or over the phone, I do not recall. It occurred some months ago.

Q. That is the conversation you have testified to which occurred on the 9th day of March, 1909.

(Mr. RIDOUT: I object to the question, because the witness has said either the 8th or 9th of March.)

Q. Well, when was your next conversation with him? A. When I went down to his place of business with the check and statement.

Q. Previous to that day had you called him up on the phone? A. I did and told him I was coming down. I called him over the phone and informed him I was coming down with the check and statement prepared to close.

Q. What did he say? A. "All right, I will be in."

Q. Did you go down? A. I went down and attempted to close the deal. I offered the payment and statement in exchange for the deed. He refused to deliver the deed or to close the contract.

Q. What excuse did he give for not closing? A. Only that I had not come down within the forty day period, and therefore he declared the sale off and forfeited the deposit.

Q. Had he at any time prior to that day ever indicated to you in any way that he was not going to carry out the contract?

(Mr. RIDOUT: I object to the question as immaterial.)

A. None whatever.

20 Q. Did he have an examination of the title made?

(Mr. RIDOUT: I object to the question as immaterial.)

A. I did.

Q. What was the cost of it?

(Mr. RIDOUT: I object to the question as immaterial.)

A. \$25.00.

Q. Are you still ready and willing to carry out your part of the contract?

(Mr. RIDOUT: I object to the question as immaterial.)

A. I am.

Q. In case the property can be released from the operation of any

trust existing thereon, are you willing to take it with a diminution of the price to correspond?

(Mr. RIDOUT: I object to the question as immaterial.)

A. Yes.

Q. Do you know who is the holder of the trust on that property?

(Mr. RIDOUT: I object to the question as immaterial.)

A. A client of Harry S. Welch.

Q. What is his name? A. I don't know.

(Mr. JONES:) "That is all."

Cross-examined by Mr. RIDOUT:

Q. Where is the Frank T. Rawlings Company Incorporated? A. 1505 Pennsylvania Avenue Northwest.

Q. Where is it incorporated—under what laws? A. Under the laws of the District of Columbia.

Q. Did I understand you correctly to say that this Company was acting as Agent both for the purchaser and the seller? A. 21 yes sir.

Q. What day was it when you had your first conversation by telephone or otherwise with Mr. Collins, in which you speak of your negotiations concerning the outstanding trust on the property? A. I cannot give the exact day but it occurred within a week after the contract was signed.

Q. What day was it you called him up on the phone and asked for information concerning the time the rent was paid, etc. A. March 8th or 9th.

Q. When was it you spoke to him about making repairs and other changes on the property? A. Within a week after the contract was signed.

Q. What day were they actually made—within what period I mean? A. Between the period of the signing of the contract and the time of the closing.

Q. Had they all been completed prior to the 9th of March? A. They were all completed a week or two prior to the 8th of March.

A. Are you in a position to give the items of each one of these expenses? A. The items?

Q. You stated it aggregated \$48.00. Q. The cost of glazing was \$1.50, cost of fences erected and two coats of paint; painting 22 down the front of the house, two coats and penciling thereof painting the woodwork, doors, window-sashes, etc., amounted to \$37.50, and the cost of repairs to the roof and the painting of the roof was in the neighborhood of \$6.00 or \$9.00.

Q. When you had your conversation with Mr. Collins concerning these expenditures, it was well within the forty-day period, and I think about a week after the contract was signed, and at a time when there was nothing to indicate a delay in closing the contract within the forty days? A. Yes sir. A. Yes sir.

Q. What day was it when you went there with the statement and

check? A. I went there with the statement and check on the 9th, 10th or 11th day of March.

Q. What papers did you take with you on that occasion? A. I took with me a check and statement; that is all.

Q. You did not have the amount of the purchase money in money? A. No money; I offered to bring the cash or a certified check if he required it.

(Mr. RIDOUT: The last portion of the answer objected to as not being responsive.)

(Mr. JONES: That is all.)

Thereupon the witness was excused.

JESSE W. RAWLINGS.

Subscribed and sworn to before the undersigned examiner in Chancery this 2nd day of November, 1909.

GEORGE C. SHINN.

23 Thereupon, D. H. ROWLAND DRURY, a witness produced on behalf of the plaintiff, being first duly sworn by the Examiner, was examined, and testified as follows:

Direct testimony by Mr. JONES:

Q. What is your business? A. I am a salesman in the real estate business in the city.

Q. How long have you been engaged as a salesman? A. About a year and a half.

Q. How old are you?

(Mr. RIDOUT: Objected to as immaterial.)

(Mr. JONES: I simply asked him the question to show he is of legal age.

A. Twenty-nine years old.

Q. By whom were you employed or with whom associated in March of this year?

(Mr. RIDOUT: Question objected to as immaterial.)

A. The Frank T. Rawlings Company.

Q. Did you have anything to do with the delivery of a deed from Lewis E. Collins to Jesse W. Rawlings? A. I did.

(Mr. RIDOUT: I object to the question and answer as there is no testimony showing the delivery of the deed.)

Q. State what you did with respect to that deed? A. I took it to Mr. Collins' office to have it signed with the data to complete the deed for delivery.

Q. Who gave you the deed? A. Mr. Jesse W. Rawlings.

Q. What day was it, do you know? A. I cannot recall 24 the exact date, but it was the last day of the sale.

(Mr. RIDOUT: Answer objected to, as the witness is undertaking to give an opinion as to the day of the expiration of the contract.)

Q. Who took the acknowledgment to the deed? A. I did.

Q. Are you a Notary Public of the District of Columbia? A. I am.

Q. What was done with the deed after it was signed and acknowledged? A. Mr. Collins requested that it be left with him.

(Mr. RIDOUT: Answer objected to as immaterial.)

Q. Did he assign any reason for requesting that the deed be left with him? A. None whatsoever.

Q. Did he say anything about his intention to carry out or not to carry out the contract?

(Mr. RIDOUT: Question objected to as immaterial.)

A. He did not.

(Objected to by Mr. Ridout as immaterial.)

Q. Was the deed executed on the same day that you took it to Mr. Collins? A. It was. In his office.

(Mr. JONES: I notify counsel for the defendant to produce the deed referred to by the witness.)

(Mr. JONES:) You may cross-examine the witness.

(Mr. RIDOUT: We have no cross-examination.)

Whereupon the witness was excused.

D. H. ROLAND DRURY.

25 Subscribed and sworn to before me, the undersigned Examiner in Chancery this 27th day of October, 1909.

GEORGE C. SHINN.

Thereupon FRANK T. RAWLINGS, a witness of lawful age produced on behalf of the plaintiff, being duly sworn by the Examiner, was examined and testified as follows:

By Mr. JONES:

Q. Mr. Rawlings, did you ever have any conversation with Mr. Collins relative to the subject of this sale testified to here? A. I did.

Q. When did you have the first conversation, if you recall the date? A. I do not now recall the exact date, but it was after Mr. Collins had refused my son Jesse to comply with the contract. I expressed surprise—

Mr. RIDOUT, interrupting witness: I object to the answer because it occurred after the refusal to comply and is immaterial. And Mr. Rawlings' expressions of surprise are immaterial.

(The witness continues:) I was surprised to receive such a message as coming from an old friend such as Mr. Collins was of mine, that—

Mr. RIDOUT, interrupting witness: I object to any testimony concerning Mr. Rawlings' relations with Mr. Collins.

(The witness resumes:) In company with my son, Jesse W. Rawlings, I called upon my friend Mr. Collins and pleaded with him as a friend to do what I deemed his plain duty to carry out the contract made between friends. It was—

26 (Mr. RIDOUT, interrupting witness: One moment; I object to this witness undertaking to argue the case.)

Mr. JONES: The only thing I want you to say, Mr. Rawlings, is what you said and what he said?

A. I asked my friend Mr. Collins to comply with the contract, and he hesitated and made me believe—

(Mr. RIDOUT, interrupting the witness: I object; what he led the witness to believe is not competent. Give his exact language.)

(The witness continues: He would not decide the question that day, but thought it would be favorable the next day.)

Q. Did you see him the next day? A. Yes. He said he had come to the conclusion to annul the contract and keep the deposit and also to appropriate the expenses of the improvements to his own use and benefit.

Q. Did he make any counter-propositions with regard to closing the sale? A. He did not.

(Mr. RIDOUT: The witness' testimony as to the statement of Mr. Collins, that he would forfeit the deposit, annul the contract and take the benefit of the repairs, etc., is objected to as immaterial.)

Q. Did you see him subsequent to that? A. That was twice I saw him.

Q. Yes? A. I think not, not to mention the matter.

(Mr. JONES: That is all.)

Cross-examined by Mr. RIDOUT:

27 —. Did Mr. Collins use the exact language you have put in his mouth,—“he would annul the contract, forfeit the deposit and appropriate the repairs? A. I do not know that he used the exact language, but that was the import of it.

Q. That is your version of it? A. Yes sir.

Mr. RIDOUT: That is all.

Thereupon the witness was excused.

FRANK T. RAWLINGS.

Subscribed and sworn to before the undersigned Examiner in Chancery this 1st day of November, 1909.

GEORGE C. SHINN.

Thereupon the session adjourned, subject to be called upon agreement of counsel.

*Testimony of Plaintiff.*

WASHINGTON, D. C., *October 20, 1909*—2.30 o'clock p. m.

Met, pursuant to agreement at the offices of Pennebaker, Carusi and Jones, Room No. 214, National Metropolitan Bank Building, 613 Fifteenth street, Washington, D. C., on the above date and hour for the purpose of takeing testimony on behalf of the plaintiff in the above entitled suit.

Present: E. A. Jones, one of the attorneys for the plaintiff; Harry S. Welch, a witness; George C. Shinn, Examiner in Chancery.

NOTE.—The following testimony of Mr. Harry S. Welch, by stipulation of counsel, is taken subject to the right of objection and cross examination on the part of the attorney for the defendant.

Thereupon, HARRY S. WELCH, a witness in behalf of the plaintiff, after being first duly sworn by the examiner, was examined and testified as follows:

Direct testimony.

By Mr. JONES:

Q. Please state your name, occupation, and residence? A. Harry S. Welch, real estate broker, Washington, D. C.

Q. Mr. Welch this suit is brought for the purpose of having a decree passed for the specific performance of a sale of sub-lot 33, Square 144, being premises number 1824 G street, N. W. Washington, D. C. It appears from the allegations of the bill, and the testimony heretofore taken, that said lot was subject to a deed of trust. I will ask you if you know who the holder of that trust was?

A. Yes sir.

Q. Who was it? A. Mrs. Margaret J. Frear.

Q. Did you have any relations with Mrs. Frear? A. I have been her agent.

Q. Did you have anything to do with the collection or disposition of the note secured by that deed of trust? A. They were under my control.

Q. I will ask you whether or not any attempt was made by Jesse W. Rawlings, the plaintiff in this suit, or by any other person, within the last six months, to take up that trust? A. Yes, sir, by Mr. Jesse W. Rawlings.

Q. I will ask you to state what interview you had with him, how many, if you remember, and what the purport of those 29 interviews was? A. Mr. Jesse Rawlings called on me two or three times, and telephoned me a number of times to get the amount necessary to pay off a Thousand Dollar note, secured by a deed of trust on that property. I gave him a statement of the principal and interest to date, and a three months' bonus.

Q. Had the note matured at the time Mr. Rawlings called to see you? A. The note had not matured.

Q. Was the holder of the note, your client, willing to have the note taken up? A. Yes, sir, on the terms stated by his agent, myself.

Q. What were the terms? A. The payment of the principal of the note, interest to date, and a three months' bonus.

Q. Do you remember when you notified Mr. Jesse W. Rawlings that the note could be taken up on those terms? A. I do not remember the exact date.

Q. Has Mr. Collins, the defendant in this suit, ever approached you with regard to taking up that trust? A. No sir.

Q. Has he so far as you know ever approached Mrs. Frear the holder of the note? A. No.

Q. Has the note ever been taken up? A. No.

Q. So that property is still subject to that encumbrance of record? A. Yes sir.

Mr. JONES: That is all.

30 Thereupon, the witness was excused.

Mr. JONES: The plaintiff announces the close of his testimony.

HARRY S. WELCH.

Subscribed and sworn to before me the undersigned Examiner in Chancery this 23 day of October 1909.

GEORGE C. SHINN, *Examiner.*

NOTE.—Mr. Ridout objects to all of the testimony of Harry S. Welch on the ground that the same is irrelevant and immaterial.

GEORGE C. SHINN, *Examiner.*

*Notice.*

To John Ridout, Esquire, Attorney for the Defendant:

At the request of Eugene A. Jones, Esq., Attorney for the plaintiff, I hereby notify you that the testimony of the plaintiff is this day closed.

October 27, 1909.

GEORGE C. SHINN,  
*Examiner in Chancery.*

Copy of the above notice acknowledged this 27 day of October, 1909.

JOHN RIDOUT,  
*Attorney for Defendant.*

Frank T. Rawlings Company.

WASHINGTON, D. C., Jan. 28th, 1909.

\$100— Received of Frank T. Rawlings Co., Agent, a deposit of One Hundred Dollars, to be applied as part payment in the purchase of sub lot 33 in square 144 with improvements thereon, being premises No. 1824 E St. N. W. in the City of Washington, District of Columbia. The purchaser is required and agrees to make full settlement in accordance with the terms of this agreement within 40 days from this date, and on default deposit will be forfeited.

Price of property Nineteen Hundred and twenty Dollars,

Terms of sale all cash, clear of all incumbrance

Good record title or deposit returned.

Interest on trust, rents, insurance, general and special taxes now due or pending to be adjusted to date of settlement.

Examination of title, conveyancing, and recording at cost of purchaser.

The forfeiture of deposit does not relieve the purchaser of the responsibility to comply with the terms of sale.

This contract is made subject to the approval of the owner.

FRANK T. RAWLINGS CO., *Agents*,  
Per J. W. RAWLINGS, *Vice Pres't.*

Accepted by—

FRANK T. RAWLINGS CO., *Agt., Purchaser*,  
Per J. W. RAWLINGS, *V. P.*

Approved:

LEWIS E. COLLINS, *Owner.*

32 DISTRICT OF COLUMBIA, ss:

I, George Curtis Shinn a Notary Public in and for the District of Columbia do hereby certify that Jesse W. Rawlings party to a certain contract of sale hereto annexed bearing date on the 28th day of January 1909 personally appeared before me in said District, said Jesse W. Rawlings being personally well known to me as the person who executed the said contract of sale and acknowledged the same to be his act and deed and the act and deed of The Frank T. Rawlings Company.

Given under my hand and seal this 13th day of March 1909.

GEORGE C. SHINN,  
*Notary Public, D. C.* [SEAL.]

(Endorsed:) Received for record on the 13 day of March A. D. 1909 at 11.59 a. m. and recorded in Liber No. 3207 fol. 472 et seq. one of the Land Records of the District of Columbia.

JNO. C. DANCY, *Recorder.*

33

## PLAINTIFF'S EXHIBIT No. 2, G. C. S.

WASHINGTON, D. C., *March 9, 1909.*

Frank T. Rawlings Co. (Inc.),  
 Real Estate, Loans, Insurance,  
 1505 Pa. Ave. N. W.

*Statement for Lewis E. Collins, Sale of Lot 33, Square 144, Premises  
 1824 E. St., N. W.*

1909.	Dr.	Cr.
Jan. 28.	Price of Property.....	\$1920.
	To Deposit .....	100.
	By Water Rent to July 1/09...	1.85
	Insurance .....	
	Rent (Paid to March 1/09)....	
Mar. 9.	To Taxes from July 1/08.....	12.70
	Deed of Trust.....	/ 100.
	Interest on same Jan. 6th, 1909, to date .....	10.83
	Deed of Trust.....	
	Interest .....	
	Cash Received .....	
	Bonus for taking up \$1000. loan	10.
	Tax Certificate .....	
	Preparation of Release.....	5.
	Notary Fee deed in fee and deed release .....	2.00
	Balance by ck. 147 to balance..	781.32
		\$1921.85
		\$1921.85

34

*Testimony of Defendant.*

Filed Feb. 15, 1910.

WASHINGTON, D. C., *December 7, 1909—3:30 p. m.*

Met, pursuant to agreement, at the offices of John Ridout, Esquire, Fendall Building, No. 344 D Street N. W., on the above date and hour, for the purpose of taking testimony on behalf of the defendant in the above entitled suit. Present, John Ridout, Esquire, Attorney for Defendant, Eugene A. Jones, Esquire, one of the Attorneys for the plaintiff, Lewis E. Collins, the defendant and George C. Shinn, Examiner in Chancery.

Thereupon LEWIS E. COLLINS, the defendant appeared as a witness in his own behalf, and after being first duly sown by the Examiner, was examined and testified as follows:

Direct examination.

By Mr. RIDOUT:

Q. Mr. Collins, you are the defendant in this case, are you not?  
 A. Yes sir.

Q. I show you a paper offered in evidence in this case, marked "Plaintiff's Exhibit No. 1," and ask you to state whether at the time that paper was executed by you, you were informed whom the Frank T. Rawlings Company represented?

Mr. JONES: I object to the question on the ground that it is immaterial and irrelevant.

A. He represented that he had a purchaser and mentioned his name.

35 Q. Do you remember his name? A. No, I do not recollect that.

Q. Did Mr. Jesse W. Rawlings say that he was the purchaser? A. He did not.

Q. When did you first learn that he claimed to be the purchaser? A. Not until he produced the deed.

Mr. JONES: I object to the question and answers on the further ground that they tend to vary the written terms of the contract.

Q. What, if any, arrangements were made at the time that paper was executed (I refer to Exhibit No. 1) with respect to the removal of an incumbrance of one thousand dollars which then rested upon the property? A. There was none made.

Q. What, if any, undertaking or promise, if any, did you make that you would remove it?

Mr. JONES: I object on the ground that it is varying the terms of a written contract. His undertaking in that regard is fully expressed on the writing itself.

A. There was no promise made.

Q. What, if anything, did Mr. Rawlings, representing the Frank T. Rawlings Company, undertake to do about the removing of the incumbrance? A. Nothing to my knowledge whatever. There was no reference to it whatever at any time.

36 Q. The bill avers that Jesse W. Rawlings, for your accommodation and benefit, undertook to obtain the discharge of that incumbrance on the property. State whether or not you authorized him to take such action in your behalf? A. I did not.

Q. What if any, report was ever made to you by Mr. Rawlings or any one else representing the Rawlings Company, to the effect that a bonus would be required to be paid in order to obtain the release of the premises?

Mr. JONES: I object on the ground that it is immaterial.

A. The release of the loan was never mentioned at any time.

Q. What, if any, promise did you at any time give to Mr. Jesse W. Rawlings to make repairs on the house, in the way of painting, erecting fences on the property and so on? A. About two weeks after the agreement of sale was made he asked permission over the 'phone to paint the house only; no other repairs.

Q. When, if at all, did you give him authority to erect a fence on it? A. I gave none.

Q. Do you recall the day when the deed conveying the property was brought to you for execution? A. March 8, 1909.

Q. It is averred in the bill that on the day of the expiration of the forty days, which would be March 9, 1909, Mr. Rawlings, through his agent, notified you that he was engaged in preparing a statement for settlement, and requested certain information; 37 do you recollect any such inquiry having been made on March 9, 1909? A. Yes, sir, he did that.

Q. What, if anything, did he say on that day or any day prior to that day of his then readiness to close the transaction? A. At that time he said he was ready and would be down shortly.

Q. What day was that? A. March 9.

Q. Did he on that day call as he said he would? A. No sir, he did not.

Q. When did he first call after that? A. It was two days later.

Q. That would be the 11th day of March? A. Yes sir.

Q. Before he come down on that occasion,—did Mr. Rawlings notify you by telephone that he was coming? I refer to the 11th of March. A. Yes, he called that morning and asked me if I would be there, also that he was coming down.

Q. The bill avers he then asked you by telephone whether you would close the transaction and you said you would close it. Is that correct? A. No, I made no such declaration.

Q. After he arrived on the 11th of March, what, if anything, did you say with respect to closing the transaction? A. I told him the contract had lapsed and I declined to sign—to make the transaction.

38 Q. Did you at any time prior to March 9, 1909, which was the last day of the time limitation, have any notice or information that the purchaser would not comply? A. None whatever.

Q. Mr. Collins, what if any, change has taken place in the value of that property since the expiration of the forty day period?

Mr. JONES: I object to the question, because it is wholly immaterial and if material at all, would only be any change which occurred between the time of the contract of sale and the — fixed for its performance. I also object on the ground that this witness is not qualified to express an opinion as to any change that may have occurred in the value of this property.

A. I would only say there has been a general appreciation of property in this section in that time.

Q. Mr. Collins, on the 11th day of March, when Mr. Rawlings did call, what, if anything, did he do in the direction of producing before you any money as part purchase price or the whole purchase price? A. He produced no money.

Q. Mr. Collins, in his testimony Mr. Rawlings says this: (I am reading from page 8).

"I called up Mr. Collins and saw him in person and got his express agreement and consent to make repairs, such as painting,

pencilling, putting up new fences, which were also painted, glazing roof, repairing and painting, at the cost of about \$48.00."

What have you to say as to the accuracy of that statement?  
39 A. It is entirely inaccurate. The only communication had with Mr. Rawlings in regard to repairs was that had over the telephone and that only referred to painting the house.

At that point the session was adjourned by agreement of counsel to meet again by agreement.

GEORGE C. SHINN,  
*Examiner in Chancery.*

Met, pursuant to agreement at the law-office of John Ridout, Esq., Fendall Building, No. 344 D Street N. W., on Wednesday, January 12, at four o'clock P. M. for the purpose of continuing the examination of Lewis E. Collins, for defendant.

Present: John Ridout, Esq., Attorney for the defendant, Eugene A. Jones, Esq., one of the attorneys for the plaintiff, Lewis E. Collins, the defendant and George C. Shinn, Examiner in Chancery.

Cross-examination.

By Mr. JONES:

Q. Mr. Collins, did you ever take any steps to remove the incumbrance on this property? A. No sir.

Mr. RIDOUT: I object to the question and answer on the ground that it is immaterial and not cross-examination.

Q. Have you at any time been in a position to deliver to the purchaser an unencumbered title?

Mr. RIDOUT: I make the same objection.

A. I might if it has been requested,—yes.

Q. At the time you executed the deed for this property 40 could you? A. Yes sir.

Q. On the day you executed that deed you intended to perform your contract, did you not?

Mr. RIDOUT: Objected to as not cross-examination and immaterial.

A. The day I signed that deed a man came with it—he came down to fix it up. I was under the impression he was there to close the deal. Yes sir. He would have taken the deed with him but I requested him to leave it.

Q. When did you make up your mind not to carry out the sale?

Mr. RIDOUT: Same objection.

A. After the time had elapsed; after the contract had lapsed, I suppose.

Q. What was your reason for not complying with the terms of the sale?

Mr. RIDOUT: Same objection.

A. One reason was the contract had lapsed. Another reason was I had use for the money at the time the contract matured and did not get it.

Q. What use did you have for the money on that particular date?

Mr. RIDOUT: Same objection.

A. I would not care to state that.

Q. You don't care to state it. A. No.

Q. Do you know what you lost by reason of not having the use of the money on that date?

Mr. RIDOUT: Same objection.

41 A. No.

Q. You did not know what you lost? A. No.

Q. Did you know whether you lost anything or not?

Mr. RIDOUT: Same objection.

A. Yes, I knew I met a loss.

Q. If you knew you met a loss why don't you know what the loss is?

Mr. RIDOUT: Objected to as being argument with the witness and not a question.

A. Because if I bought something at a price which advanced at different stages of time—how would I know what I lost? You might pay one day one price and another day another, and it would be impossible to tell what you lost on any particular date.

Q. Did you contract to buy or pay for anything on that day out of the proceeds of that sale?

Mr. RIDOUT: Same objection.

A. What I saw.

Q. You would have bought what? A. I don't have to answer that; I decline to state. I might have bought a good many things.

Q. You had no contract to buy anything, had you?

Mr. RIDOUT: Same objection.

A. No.

Q. You are unable to state with any exactness what your loss was? A. No; that is not a fixed quantity what the loss was.

Q. Did you ever tender a deed for the property and make 42 demand for the purchase money?

Mr. RIDOUT: Objected to as wholly immaterial.

A. No.

Q. How far was this property from your place of residence? A. How far?

Q. Yes. A. About two and a half blocks, I guess.

Q. Did you see the property every day? A. No.

Q. Mr. Collins, is not it a fact that the real reason you did not carry out the terms of this sale is, not because a day or two had lapsed after the time fixed in the contract, but because, after entering

into this contract you thought you could get a little more money for the property?

Mr. RIDOUT: I object on the ground that the testimony sought to be elicited is immaterial and on the further ground that it would be a perfectly good reason for the defendant to refuse to comply with the contract, unless the plaintiff performed his part of the agreement exactly within the time limit.

A. No.

Q. Mr. Collins, do you remember a conversation had with Mr. Jesse W. Rawlings in which Mr. Rawlings stated that he was engaged in preparing a statement for settlement of the sale, and asked you to give him the data regarding the rent, taxes and so on? A. Yes; he asked—he called me up over the 'phone to that effect.

43 Q. Do you know what day that was? A. I can't say exactly.

Q. Was it the last day of the forty days? A. No, it must have been before that. It must have been a couple of days at least, my recollection is before that.

Q. You have no means of making the date certain other than your recollection at that time? A. No; I am positive it was at least two days before when he got that information.

Q. Was it before or after the deed was executed by you? A. I am pretty certain it was before.

Q. You gave him that data, did you not? A. Yes sir.

Q. Now on the 11th day of March you had another conversation with Mr. Jesse W. Rawlings, did you not, two days after the expiration of the contract? A. Yes sir.

Q. He told you he was coming down to close, didn't he? A. He asked me if I would be at my place of business. I told him I would—yes.

Q. Did he tell you he was coming down to close the sale? A. Possibly he did.

Q. You didn't tell him you were not going to carry out the sale, did you? A. I told him I would be there. He did not ask me if I would carry it out. He said he was coming down.

Q. He told you he was coming down to close the sale? A. He said he was coming down.

Q. Didn't he say he was coming down to close the sale? A. I am not certain.

44 Q. You didn't tell him then that you would not close the sale? A. No.

Mr. RIDOUT: Objected to as immaterial.

Q. Did you ever offer to pay to Mr. Rawlings the value of the repairs he put on the property?

Mr. RIDOUT: Objected to as immaterial and on the further ground that according to this record the defendant is not obliged to repay Mr. Rawlings.

A. He never made any request on me.

Mr. JONES: The Examiner will please repeat the question.

(Question is repeated.)

A. No.

Q. Did you at any time prior to the 11th day of March, 1909, ever tell Mr. Rawlings that you did not intend to carry out that contract?

Mr. RIDOUT: Objected to on the ground that the evidence sought is immaterial and on the further ground that the plaintiff was bound by the terms of his written contract and that he could not expect compliance after the expiration of the terms of the contract.

A. No.

Q. You knew Mr. Rawlings was expending money making certain repairs on the property, did you not? A. He got my request to paint the property.

Q. Your what? A. My permission.

Q. You knew that he was also contracting a liability for 45 examination of the title, etcetera? A. I had no knowledge.

Q. You didn't know? A. No, I didn't know anything as to that. I knew he was attending to matters. He got everything arranged. He did not say anything about the expenses.

Q. You knew he was arranging to have that deed of trust removed? A. No sir; that was never mentioned.

Q. It was mentioned in the contract? You knew it was in the provisions of that paper (showing witness the paper), didn't you?

A. Yes sir.

Q. You knew that under the contract it was required to be removed? A. No sir.

Q. Didn't you read the contract? A. Yes.

Q. Does not it say the property is to be "unencumbered?" A. Well, I construed that to mean he was to pay the amount less the amount of the trust. He never intimated that the trust was to be raised.

Q. And never consulted you about getting rid of that trust? A. No.

Q. And never said anything about the one per cent. bonus? A. No sir.

Q. And you had no intimation that the trust was to be raised? A. No, not prior to the 42nd day.

46 Mr. JONES: That is all.

Redirect examination by Mr. RIDOUT:

Q. Had you prior to the 9th day of March, 1909, any intimation whatever that the purchaser did not intend to comply on time with his contract? A. None whatever.

Mr. RIDOUT: That is all.

LEWIS E. COLLINS.

Subscribed and sworn to before me the undersigned Examiner in Chancery this 31st day of January, 1910.

GEORGE C. SHINN, *Examiner.*

The Examiner files herewith deed dated March 6, 1909, from Lewis E. Collins to Jesse W. Rawlings, marked Collins' Exhibit No. 1, said deed having been produced by the defendant pursuant to the request of Mr. Jones, Attorney for plaintiff.

Mr. Ridout, Attorney for the defendant announced the close of the testimony for the defendant.

GEORGE C. SHINN, *Examiner.*

COLLINS' EXHIBIT No. 1.

This deed, made this Sixth day of March in the year one thousand nine hundred and nine by and between Lewis E. Collins unmarried, of the District of Columbia party of the first part, and Jesse W. Rawlings, of the same place party of the second part:

Witnesseth, That in consideration of Ten Dollars, the party of the first part does grant unto the party of the second part, in fee simple, all that piece or parcel of land in the City of Washington, District of Columbia, described as follows, to wit: Lot numbered Thirty-three (33) in Harvey A. Kohr's subdivision of Original lot numbered Nine (9) in Square numbered One Hundred and forty-four (144), as per plat recorded in Book 12 folio 101 of the Office of the Surveyor of the District of Columbia together with the improvements, rights, privileges, and appurtenances to the same belonging.

And the said party of the first part covenants that he will warrant specially the property hereby conveyed: and that he will execute such further assurances of said land as may be requisite.

Witness his hand and seal the day and year hereinbefore written.

LEWIS E. COLLINS. [SEAL.]

In presence of

D. H. ROLAND DRURY.

I, D. H. Roland Drury, a Notary Public in and for the District of Columbia, do hereby certify that Lewis E. Collins, unmarried, party to a certain Deed bearing date on the Sixth day of March, 1909, and hereto annexed, personally appeared before me in said District, the said Lewis E. Collins being personally well known to me as the person who executed the said Deed, and acknowledged the same to be his act and deed.

Given under my hand and seal this 8th day of March, 1909.

D. H. ROLAND DRURY, [SEAL.]  
Notary Public, D. C.

*Final Decree.*

Filed Mar. 3, 1910.

\* \* \* \* \*

This cause coming on to be heard upon *upon* the bill answer and testimony it is by the Court this 3rd day of March, 1910, Ordered adjudged and decreed that the bill be and the same hereby is dis-

missed without prejudice to the right of the plaintiff to proceed at law if so advised; that the defendant recover his costs against the plaintiff to be taxed by the Clerk, and have execution thereof as at law.

JOB BARNARD, *Justice.*

From this decree the complainant notes an appeal in open court to the Court of Appeals and the bond for costs is fixed at \$100.00 or a deposit of \$50.00 in lieu thereof, in the registry of the court.

JOB BARNARD, *Justice.*

*Memorandum.*

March 15, 1910.—Appeal bond filed.

50      *Directions to Clerk for Preparation of Transcript of Record.*

Filed Mar. 22, 1910—the 22nd day of March, 1910.

The Clerk of said Court will please make transcript for Court of Appeals and include therein, the bill, answer, depositions & exhibits (all) decree, appeal, appeal bond & this designation.

EUGENE A. JONES,  
*Attorney for Plaintiff.*

51      Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 50, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 28444, in Equity, wherein Jesse W. Rawlings is Complainant and Lewis E. Collins is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 26th day of April, 1910.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 2158. Jesse W. Rawlings vs. Lewis E. Collins. Court of Appeals, District of Columbia. Filed Apr. 27, 1910. Henry W. Hodges, clerk.